IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5642 of 2005

Date of decision: 30.11.2006

Bhim Singh and others

..... Petitioners.

Versus

Union of India and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Ms. Arti Thakur, Advocate
for the petitioners.

Mr. Anupam Gupta, Advocate and
Mr. Vinod Sharma, Advocate
for the respondents.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 10.10.2005 passed by the learned Additional District Judge, Chandigarh whereby the respondent Union Territory Administration has been allowed to amend the written statement filed in the suit at the stage of first appeal to add the following objection:-

> "That the suit for mandatory injunction for directing in rectifying the entries by sanctioning mutation No. 1530 is not maintainable as the said mutation No. 1530 has already been rejected/ declined by the competent authority on 29.12.1993. The mutation No. 1530 is no more in existence, therefore, no mandatory injunction can be issued to make entry in the regular record as per mutation No. 1530".

The petitioner- plaintiff in the suit had approached the Court by way of suit for declaration that plaintiffs were owners in possession of land detailed in the plaint and that mutation No. 1274 showing mutation of this land in favour of the Forest Department (Provincial Government) was wrong and for mandatory injunction for rectification of this wrong entry by sanctioning mutation No. 1530 in favour of plaintiffs already entered in the revenue record by Patwari Halqa, Khuda Alisher and for permanent injunction restraining the defendants from interfering in the peaceful ownership and possession of the plaintiffs in the suit land. The suit filed by the plaintiffs was decreed.

The Union Territory Administration as also the Union of India preferred a First Appeal. During the pendency of the first appeal, an application for amendment of written statement was filed. It was averred by the respondents that mutation No. 1530 of 20.12.1989 which was entered by Halqa Patwari was rejected by the Competent Authority on 29.12.1993. At the time of filing of written statement the aforesaid fact was not in the knowledge of Divisional Forest Officer on whose instructions the written statement was drafted and filed. The plaintiffs also do not bring out this fact in the replication filed by them to the written statement. It was stated that pleading the fact of rejection of mutation No. 1530 dated 20.12.1989 was very relevant and necessary for the proper decision of the case. Accepting this contention the learned Additional District Judge allowed the proposed amendment.

Challenging the said order learned counsel for the petitioner has argued that in fact the suit was filed on 28.11.1994. The amended

written statement was filed on 12.1.1994 much after the mutation had been allegedly rejected. This fact should have been mentioned by the Administrator in the written statement as filed. She states that at this stage the amendment should not be allowed as it would unnecessary prolong the litigation.

After hearing learned counsel for the parties I do not find any merit in the contention raised by leaned counsel for the petitioner. The fact that entry regarding sanction of mutation No. 1530 has been rejected by the Competent Authority is a fact which would be relevant for a just decision of the controversy. I am inclined to believe the stand taken by the Union Territory Administration that the Divisional Forest Officer under whose instructions the written statement was filed may not have been aware of the aforesaid fact. In these circumstances I do not find any error in the order passed by the lower appellate Court in allowing the application seeking amendment of the written statement.

Consequently I find no merit in this revision petition and the same is dismissed.

November 30, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**